IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 748 OF 2005

M/s. Ajit Developers Pvt.Ltd.
and anr. .. Appellants

Vs.

Aishabai Khataul Abdul Wahab .. Respondent

Mr. N.N. Walawalkar with Mr. R.K. Kakkara for appellants.

Mr. S.G. Surana for respondent.

**CORAM: B.H. MARLAPALLE, J.**

**Date : July 19, 2005.**

**P.C.:**

1. Heard Mr. Walawalkar the learned counsel for the appellants and Mr. Surana the learned counsel for the respondent.

2. The appellants are the Companies registered under the Companies Act, 1956. They have filed S.C. Suit No.4746 of 2004 for perpetual injunction against the respondent-defendant restraining her from creating any obstruction in the development work and

construction to be carried out by them on the suit land/plots covered by the agreement for sale executed on or about 11/9/1995. The suit properties are Hissa Nos.20, 17, 13, 16B and CTS No.338 of village Vile-Parle and the area admeasures 2112.70 sq.mtrs.

3. Notice of Motion No.4104 of 2004 was taken out in the said suit praying for interim orders/protections and by the impugned order dated 22/6/2005 the Notice of Motion is dismissed. Suit has been adjourned to 22/7/2005. Ad-interim order of injunction is operative as at present.

4. The trial court, based on the five different agreements for sale, noted that earnest money was paid to the defendant though with varying percentage and the other clauses of the agreement indicated that there were obligations cast upon the respective parties. Letter of possession executed by the defendant in favour of the plaintiffs in respect of five different plots and dated 11/9/1995 was also placed on record. As per the plaintiffs the cause of action to file suit was the Advocate’s notice/

communication on the instructions of the defendant. Said letter dated 9/9/2004 was placed at Exh."K" with the plaint and by the said communication it was intimated to the plaintiffs that the writing dated 29/10/1994 was cancelled and/or withdrawn forthwith. However, in the Written Statement/reply filed before the trial court the defendant contended that the agreements for sale signed on 11/9/1995 were also terminated. The trial court, therefore, noted that in the absence of suit for specific performance, prayer for permanent injunction could not be entertained. It referred to the provisions of Section 41(h) of the Specific Relief Act.

5. As the suit is pending, the plaintiffs are not estopped from taking out a motion for amendment of the pleadings, more so when in the written statement the defendant has now taken a plea that the agreements for sale have been terminated by her so as to amend the suit for specific performance and consequent reliefs, but on the face of the admitted facts the plaintiffs will have to be protected at least to the extent that the defendant would not take any steps to create third

party interest in the suit property for a fixed period.

6. Hence, the appeal is disposed off with liberty to the appellants to take out Chamber Summons for amendment of the plaint or filed a fresh suit and if such a motion is moved within a period of two weeks from today, the defendant shall not take any steps to deal with or dispose of or create any third party rights/interest in the suit property for a period of four weeks from today. By way of abundant precaution it is clarified that this order will not be to the prejudice of the rights and contentions of the parties.

**(B.H. Marlapalle,J.)**